

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

THE UNITED STATES OF AMERICA,
vs.
VICTOR PERE-QUIROZ,
Plaintiff,
Defendant.

Case No. 2:16-cr-93-GMN-VCF

REPORT & RECOMMENDATION

Before the court are Pere-Quiroz's motion to suppress (ECF No. 59), the Government's response (ECF No. 65), and Pere-Quiroz's reply (ECF No. 67). This court held an evidentiary hearing at 10:00 am on July 20, 2016. For the reasons stated below, Pere-Quiroz's motion should be granted.

I. Background

In September 2015, Pere-Quiroz, along with co-Defendant Christina Tripp,¹ allegedly drove from Ely to Henderson in order to purchase methamphetamine. (ECF No. 65-1) Unfortunately for the Defendants, the seller was cooperating with law enforcement. As Tripp approached the seller's vehicle, she was arrested. (*Id.*) Pere-Quiroz immediately fled from their vehicle, but was arrested after a short foot chase. (*Id.*)

At a Henderson police station Pere-Quiroz was questioned by Nevada Department of Corrections supervisor David Medua, FBI agent Josh Kip, Criminal Investigator Teresa Laurian. (ECF No. 65)

¹ Tripp has pled guilty to one count of conspiracy to possess methamphetamine with intent to distribute. (ECF No. 65) She does not join in this motion.

Pere-Quiroz was more comfortable speaking Spanish.² Investigator Teresa Laurian translated. Laurian
1
is employed by the Nevada Department of Corrections as a criminal investigator. She has
2
approximately 7 years of experience with the Department and has worked in the sexual assault
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investigations, internal affairs, and drug units. She has performed over 100 translations for various law
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enforcement agencies, but is not a certified translator for the Department. At the evidentiary hearing,
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Laurian confirmed the English translations of selected Spanish portions of the interview. A transcript
6
and video recording of the interview were admitted into evidence.

8
During the interview, Laurian spoke to the officers in English and spoke to Pere-Quiroz in
9
Spanish. Pere-Quiroz spoke Spanish at all relevant times.

10
Kip: Ok we have Teresa here; the first thing that I am going to do is [go over] the advice
11
of rights. This is the one that we use, and if you can translate and maybe have him sign at
12
the bottom.

13
Laurian (to Pere-Quiroz): I am going to read the rights from the English copy, but we are
14
going to make you sign, please. This is the same but translated.

15
Pere-Quiroz: [A]nd why I have to sign?

16
Laurian: [Y]ou understand that we read your rights before we talked to you. Ok? That it
17
is the right to remain silent, you understand?

18
Pere-Quiroz: Yes. I don't have to talk if I don't want to.

19
Laurian: you don't have to talk if you don't want, Ok?

20
Pere-Quiroz: I don't want to talk.

21
Laurian: [Y]ou don't want to talk? Ok.

22
Laurian (to Kip): That's it. He invoked.³

23
² At the hearing this court noted that Pere-Quiroz understands English fairly well and during the interview Pere-Quiroz
24
responded to one of Kip's English questions in Spanish.

25
³ The transcript filed with the Government's response to the motion to compel (ECF No. 65-3) unhelpfully omitted the
phrase: "He invoked." In order to obtain accurate interview dialogue, this court reviewed a video recording of Pere-Quiroz's
interrogation. (ECF No. 66)

1 Kip: Ok. Ok. We were hoping to try and talk to you about some stuff. You don't want to
2 talk?⁴

3 Pere-Quiroz: I don't know what's going on. I don't know what it is happening.

4 Laurian (to Pere-Quiroz): We cannot talk to you unless you give us the right to talk to
5 you.

6 Kip (to Laurian): Explain to him that he was a passenger in that vehicle coming up here.
7 And we want to know why he was in that vehicle. But again if he doesn't want to talk to
8 us, we have to stop according to the law. We'd like him to tell his side of the story.⁵

9 Laurian (to Pere-Quiroz): We understand that you went for a ride and what we want to do
10 it is to understand why you were with her now and why you were coming today? But if
11 you don't have us the right to talk to you, by law we can't talk to you.

12 Pere-Quiroz: [O]k, well yes. I can tell you why I was coming, but just that. I do not
13 know anything else.

14 (ECF No. 65-3)

15 Pere-Quiroz then signed a *Miranda* waiver form, and proceeded to make incriminating
16 statements. (*Id.*) He now move to suppress those statements because they were allegedly obtained after
17 he had invoked his *Miranda* right to silence. (ECF No. 65)

18 II. Discussion

19 In order to safeguard the right against self-incrimination, the police must inform a suspect of
20 certain rights before beginning a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 460, 86
21 S.Ct. 1602, 1620 (1966).

22 In now familiar words, the defendant must be advised of that:

23 he has [1] the right to remain silent, [2] that anything he says can be used against him in a
24 court of law, [3] that he has the right to the presence of an attorney, and [4] that is he

25 ⁴ The interview transcript only states that "Officer Speaks in English." The absence of a verbatim transcription, this court
relied on the video recording of the interview and Investigator Laurian's testimony.

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1 cannot afford an attorney one will be appointed for him prior to any questioning if he so
desires.

2 *Duckworth v. Eagan*, 492 U.S. 195, 202, 109 S.Ct. 2875, 2880, 106 L.Ed.2d. 166 (1984) (citing
3 *Miranda v. Arizona*, 384 U.S. 346 (1966)).

4 1. Agent Kip Continued to Impermissibly Interrogate Pere-Quiroz After He Invoked His Right to
5 Remain Silent

6 i. Pere-Quiroz Unambiguously Invoked his Right to Remain Silent

7 Once a defendant unambiguously invokes his right to remain silent, all interrogation must cease.
8
9 *Miranda*, 384 U.S. at 473-74, 86 S.Ct. at 1627. Pere-Quiroz statement, “I don’t want to talk,” can only
10 be interpreted as an unambiguous invocation of his right to remain silent. His words did not contain the
11 equivocation, indecision, or uncertainty that would have rendered his request ambiguous. *See Davis v.*
12 *United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) (Maybe I should talk to a
13 lawyer” was an ambiguous request for counsel); see also *United States v. Rodriguez*, 518 F.3d 1072,
14 1076-77 (9th Cir. 2008) (“I’m good for tonight” was an ambiguous invocation of the right to remain
15 silent).

16 The Government argues that the agent’s subsequent questions were intended to clarify Pere-
17 Quiroz’s ambiguous statement. *Rodriguez*, 518 F.3d at 1079 (holding that police officers had a duty to
18 clarify ambiguous invocations made before a waiver of *Miranda* rights). The officer’s duty to clarify
19 however is only triggered when the defendant has made an ambiguous request to remain silent. *See id.*
20 As discussed above, the Government’s argument incorrectly asserts that Pere-Quiroz’s statement, “I
21 don’t want to talk” is an ambiguous invocation of the right to remain silent.

22 After Pere-Quiroz stated that he did not wish to talk to the officers, Kip asked him: “[y]ou don’t
23 want to talk?”. In light of Pere-Quiroz’s unambiguous statement, Kip’s question was inappropriate. It
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25

1 is an attempt to get Pere-Quiroz to change his mind rather than an effort to clarify Pere-Quiroz's
 2 previous unambiguous statement.⁶ See *Michigan v. Moseley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d.
 3 313 (1975) (questioning after a *Miranda* right has been invoked, "operates on the individual to
 4 overcome free choice in producing a statement"). On cross-examination at the evidentiary hearing,
 5 Investigator Laurian conceded that, but for Agent Kip's request that she explain the situation to Pere-
 6 Quiroz, she would have terminated the interview.

7 ii. *Agent Kip Continued to Interrogate Pere-Quiroz After He Invoked His Right to*
 8 *Remain Silent*

9 a. Kip's Questions Constituted an Interrogation

10 "Interrogation is defined not only as express questioning but its 'functional equivalent.'" *United*
 11 *States v. Moreno-Flores*, 33 F.3d 1164, 1169 (9th Cir. 1994). "The functional equivalent of
 12 interrogation includes 'any words or actions on the part of the police (other than those normally
 13 attendant to arrest and custody) that the police should know are reasonably likely to elicit an
 14 incriminating response.'" *Id.* While the focus of this inquiry is on the defendant's perceptions, "the
 15 police are not held accountable for the unforeseeable results of their words or actions." *Id.*

16 In *Moreno-Flores*, Border Patrol agents arrested the defendant with 600 lbs. of cocaine near the
 17 U.S.-Mexico border. *Id.* at 1166. While the agents were transporting the defendant to a detention
 18 center, they mentioned that they had found the cocaine in the defendant's car and that the defendant was
 19 in "serious trouble." *Id.* The following day the defendant made incriminating statements about the
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24 ⁶ Even assuming that Kip were permitted to ask Pere-Quiroz a clarifying question, Pere-Quiroz responded: "I don't know
 25 what's going on. I don't know what it is happening." (ECF No. 65-3) This response, which should not have been elicited,
 cannot be used to create ambiguity where none existed before. *Anderson v. Terhune*, 516 F.3d 781, 791 (9th Cir. 2008).

1 cocaine. *Id.* On appeal, the Ninth Circuit held that the agents' statements about the cocaine did not
 2 amount to an interrogation. *Id.* Therefore the defendant's statements were admissible. *Id.*

3 Unlike the agents in *Moreno-Flores*, Kip asked Pere-Quiroz a pair of direct questions: (1) why
 4 he was in a car with Tripp and (2) why he had traveled from Ely to Henderson. This was an
 5 interrogation.

6 The Government argues that Kip did not begin to interrogate Pere-Quiroz until after Pere-Quiroz
 7 had signed a *Miranda* waiver form. (ECF No. 65) The Government's argument however
 8 mischaracterizes Kip's statements. Kip asked Laurain to tell Pere-Quiroz, "we want to know why he
 9 was in that vehicle." (ECF No. 65-3) Laurain then translates "what we want to do is to understand why
 10 you were with her and why you were coming [to Henderson] today?" (*Id.*) Kip and Laurain's words are
 11 not an explanation of the situation, *Moreno-Flores*, 33 F.3d at 1169, and they were not idle chatter
 12 between the two officers. *Rhode Island v. Innis*, 446 U.S. 291, 294, 100 S.Ct. 1682, 1686-87, 64
 13 L.Ed.2d 297 (1980). Their words were express questions directed at Pere-Quiroz with the intent of
 14 finding out more about his involvement with Tripp and the drug transaction.
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16 b. Pere-Quiroz's Right to Remain Silent was Not Scrupulously
 17 Honored

18 A defendant's invocation of his right to remain silent does not preclude the police from all
 19 further questioning. *Moseley*, 423 U.S. at 96. The police may reinitiate questioning so long as the
 20 defendant's right to remain silent was "scrupulously honored." *See id.* at 104-07, 96, S.Ct. at 326-328
 21 (holding that the right to remain silent implicitly confers the "right to cut off questioning").

22 When determining whether a defendant's right to remain silent was scrupulously honored, a
 23 court will inquire "into all of the relevant facts to determine whether the suspect's rights have been
 24 respected." *United States v. Hsu*, 852 F.2d 407, 410 (9th Cir. 1988). Among the factors to be
 25

1 considered are: (1) the amount of time between the interrogations; (2) the provision of fresh *Miranda*
 2 warnings before the second interrogation; (3) the scope of the second interrogation; and (4) “the
 3 zealousness of officers in pursuing questions after the suspect has asserted the right to silence.” *Id.* This
 4 list was not exhaustive, and no one factor by itself is dispositive. *Id.*

5 Here, none of the enumerated *Hsu* factors weigh in favor of finding that Henderson police
 6 officers scrupulously honored Pere-Quiroz’s right to remain silent. Kip resumed the interrogation
 7 immediately after Pere-Quiroz’s invocation and the first and second sets of questions pertained to the
 8 same drug purchase. *See id.* Additionally the short interlude between the invocation and the resumption
 9 of questioning indicates that the officers were very eager to obtain Pere-Quiroz’s statement despite the
 10 invocation of the right to silence. *See id.* Instead of scrupulously honoring Pere-Quiroz’s right to
 11 remain silent, Kip obtained a waiver *Miranda* rights after Pere-Quiroz had unambiguously invoked his
 12 right to remain silent. These subsequent incriminating statements should therefore be suppressed.
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14 2. Pere-Quiroz Did Not Knowingly, Voluntarily, and Intelligently Waive His Right to Remain
 15 Silent

16 Once a defendant has invoked his right to remain silent, all questioning must cease immediately,
 17 and “any subsequent statements by the defendant in response to continued interrogation cannot be used
 18 to find a waiver or cast ambiguity on the earlier invocation.” *Anderson v. Terhune*, 516 F.3d 781, 791
 19 (9th Cir. 2008). The Government argues that Pere-Quiroz knowingly, voluntarily, and intelligently
 20 waived his right to remain silent when he signed a *Miranda* waiver form. (ECF No. 65) The
 21 Government detailed how the officers explained to Pere-Quiroz his *Miranda* rights, in both Spanish and
 22 English, how the agent patiently answered clarifying questions, and how Pere-Quiroz ultimately signed
 23 a *Miranda* waiver form. (*Id.*)

1 The Government's argument ignores Pere-Quiroz's previous invocation of his right to silence,
2 and the fact that the subsequent waiver was a product of continued questioning. *Anderson*, 516 F.3d at
3 781. When Pere-Quiroz stated that "[he didn't] want to talk" all interrogations should have ceased at
4 that moment. *Miranda*, 384 U.S. at 473-74, 86 S.Ct. at 1627. Investigator Laurian, a trained law
5 enforcement officer, conceded this fact at the evidentiary hearing. The Government cannot use Pere-
6 Quiroz's post-invocation statements to cast ambiguity on his unambiguous invocation. *Anderson*, 516
7 F.3d at 781.

8 Similarly the Government cannot rely on Pere-Quiroz's eventual waiver of his *Miranda* rights.
9 Had the officer scrupulously honored Pere-Quiroz's invocation of his right to remain silent, in all
10 likelihood Pere-Quiroz would not have signed the *Miranda* waiver. Since Pere-Quiroz unambiguously
11 invoked his right to remain silent and his *Miranda* waiver was ineffective, his incriminating statements
12 should be suppressed.

13 ACCORDINGLY, and for good cause shown,

14 IT IS HEREBY RECOMMENDED that Pere-Quiroz's motion to suppress (ECF No. 59) be
15 GRANTED.

16 IT IS FURTHER RECOMMENDED that all statements after Laurian says "[h]e invoked" should
17 be suppressed.

18 IT IS SO RECOMMENDED.

19 DATED this 21st day of July, 2016.

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23 
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE